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IN THE

Supreme Court of the United States

OCTOBER TERM, 1940

No. 936

WILLIAM DAVIES CO., INC.,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, EX REL. JOHN L. TOMAN, County Treasurer and Ex-Officio County Collector of Cook County, Illinois,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

BRIEF IN SUPPORT OF PETITION FOR CERTIORARI

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STATEMENT 1

ARGUMENT 7

I. When the Constitution classifies municipalities or authorizes the legislature to make certain specific classifications, each is in turn exclusive of all others, and the legislature may not go beyond the classification embodied in the Constitution or beyond that which the Constitution expressly authorizes the legislature to make. The legislature may not by addition, subtraction or modification affect what the Constitution has provided.

That when Section 34 of Article IV segregated the City of Chicago from all other municipalities, and placed it in an isolated position or class by itself for the purposes of local municipal government, the effect was to deny to the General Assembly all power to classify the City of Chicago in matters pertaining to its local municipal government.

The General Assembly is the legislative agent of the People of Illinois created by the People through the medium of the Constitution 7

That the General Assembly may in anywise exercise control over the instrument of its creation is a proposition that speaks its own refutation.

II. The pretended classification involving the Tax Levy Act here under consideration is arbitrary and capricious. The basis of classification—a population of 150,000 bears no reasonable or just relationship to the objects sought to be accomplished—the levy and collection annually of $37,000,000 in taxes.

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The classification involved in each and all of the pension acts is arbitrary and capricious. The basis of classification—a population of 200,000 bears no reasonable or just relation to the objects of the acts—the levy of taxes with which to pay pensions. There are many classes of municipal employes throughout the State of Illinois, for whom no pension provisions are made who are as justly entitled thereto as are the employes involved in the three acts in question. There is no necessity for the classification of municipalities for the purpose of the payment of pensions to their respective employes inasmuch as there is as much need for pensions being paid to municipal employes in municipalities of less size as there is in a municipality of 200,000 or more population.

The pretended classification in each instance is made for the sole purpose of singling out the City of Chicago as the only municipality that can possibly be affected by the acts involved or any or either of them, and to deceive the public and the courts in the belief that said acts involve classification, when their real purpose was to identify the City of Chicago without mentioning it by name, with the hope of avoiding a submission of said acts and each of them to a referendum vote in compliance with Section 34 of Article IV of the State Constitution. There is no necessity for any of the pretended classifications. 17

III. While legislative classifications are permissible under the Fourteenth Amendment to the Federal Constitution, they will not be tolerated unless there is a real necessity therefor. They must be reasonable and just. There must be a natural relationship between the classification made and the object sought to be accomplished by the legislation based upon the classification. 25

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IV. Section 34 of Article IV is a grant of power to the General Assembly to in turn grant powers to the City of Chicago constituting a scheme or charter of local municipal government. Under the well established rule of construction that the expression of one thing is to the exclusion of all others, said Section 34 embodies all of the power that the legislature possesses to legislate concerning the powers of local municipal government. Under this constitutional grant to the General Assembly, taxation is expressly made a power of local municipal government. Consequently, inasmuch as each of acts in question involves the power of taxation for the purposes of local municipal government of Chicago, none of said acts can take effect until approved by a majority of the legal voters of said city. 33

V. The acts in question and each of them violate Section 34 of Article IV of the State Constitution in that they do not nor do any or either of them embody a requirement that the act in each instance be submitted to a referendum and receive a majority of the votes of the legal voters of the City of Chicago before it takes effect in the City of Chicago. 38

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decisions, and the grounds upon which they proceed, it is clear that in a case like the present, where the issue is whether a state statute in its application to facts which are set out in detail in the pleadings and are admitted by demurrer, violates the Federal Constitution, this Court must analyze the facts as averred and draw its own inferences as to their ultimate effect, and is not bound by the conclusion of the State Supreme Court in this regard." 40

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MAY IT PLEASE THE COURT:

To avoid repetition, we refrain from stating herein the facts involved, and respectfully refer the Court to the petition filed herein for those facts.

We feel confident that from the matters set forth in the petition filed herein, without any argument on our part it has become apparent to the Court that the People of Illinois realizing the marked disparity between the

tax needs and other needs of the City of Chicago and those of any other municipality in the state, by Section 34 of Article IV of the Constitution segregated the City of Chicago from all other cities and villages in the state, and placed it in an isolated position, thereby enabling the General Assembly to pass laws for the City of Chicago that would be violative of Section 22 of Article IV of the Constitution, were it not that Section 34 of Article IV permitted the enactment of laws for the local municipal government of the City of Chicago, notwithstanding Section 22; that having thus isolated the City of Chicago from other municipalities, it is not now within the power of the legislature to undo what the Constitution has done, and by a form of pretended classification place the City of Chicago in a pretended class with other municipalities;

That the pretended classification embodied in each of the three Pension Acts, based as they are on a population of 200,000, precludes any accretion to the class for at least twenty-five years, and leaves the City of Chicago designated as the only member of the class;

That the classification of 150,000 employed in the Tax Levy Act left only two months' time within which any municipality other than Chicago might attain a population of 150,000, and thereby avail of the portion of the act applying to tax levies for the years 1934 and 1935; that time having elapsed many years ago it has been conclusively demonstrated that no municipality has come within the class in time to avail of all of its provisions; that to make the matter still worse, the General Assembly constructed another insuperable barrier to any city other than Chicago coming into this class by raising the population limit in the year 1939 from 150,000 to 500,000, thereby in all human probability forever precluding any municipality, other than the City of Chicago, from membership in the pretended class;

That there is no necessity for the grant by the General Assembly to any municipality, outside of Chicago, of authority to levy $37,000,000 in taxes, inasmuch as no municipality now has over 105,000 population, and inasmuch as the City of Chicago has 3,390,000 population, and if at some time in the future a city should attain a population of 150,000, it would serve no useful purpose, because the population limits for the class is now 500,000, but even if it were otherwise, presumptively, and on a population basis, a city of 150,000 would need about one twenty-second part of the revenue required by the City of Chicago, or not to exceed $1,700,000, so that this Court has undoubtedly observed from the petition that there is no necessity for the Tax Levy Act; that it is unreasonable, and that there is no just relationship between the basis of classification employed and the levy of $37,000,000 annually in taxes, that the Tax Levy Act is purely arbitrary, capricious and void;

That while the state court opinion says that the Tax Levy Act does not purport to apply to the City of Chicago alone, an act must be construed according to its effect, and not according to its purport, and when so construed, the act does designate by a very definite description the City of Chicago to the exclusion of all other cities and villages, although the City of Chicago is not mentioned therein by name;

That in order that the due process of law requirement of the Fourteenth Amendment to the Federal Constitution may not be defied or violated by state legislatures and state courts, it becomes the duty of this Court to pass upon the federal question presented to the state court, and by it ignored, and in so doing strike down each and all of the four acts in question.

In an endeavor to be of help to the Court, should that help be desired, we proceed to first call the attention of

the Court to a few general rules announced by you in other cases and then briefly discuss certain of the questions arising on the record and cite some of the decisions pertaining thereto.

A few pertinent generalities are:

The purpose of the Fourteenth Amendment is to extend to the citizens and residents of states the same protection against arbitrary state legislation, affecting life, liberty and property as afforded by the Fifth Amendment against similar legislation by Congress.

Tonawanda v. *Lyon,* 181 U. S. 389.

Tax laws must be restrained under the Federal Constitution if by their necessary operation they are inconsistent with the fundamental principles embraced by the requirements of due process.

Southwest Oil Co. v. *Texas,* 217 U. S. at 118.

The Federal Courts are not bound by the State Court's construction of a tax law.

Quaker City v. *Commonwealth,* 277 U. S. 389.
Louisville v. *Coleman,* 277 U. S. 32.

The initial construction of Section 34 of Article IV is embodied in *City* v. *Reeves,* 220 Ill. 274. The opinion in the case was filed at the April Term 1906. It will, therefore, be observed that the opinion has stood as a beacon light by which to guide both courts and attorneys concerned with the scope and meaning of Section 34 of Article IV, particularly in view of the fact that the opinion has never been either refuted or criticised. It is worthy of note that the opinion here involved does not even mention the case. For some reason it was ignored. Certainly it could not have been distinguished, from the case here presented.

We assume that this Court will read with interest the opinion in its entirety and content ourselves therefore with a bare outline of the points covered by the opinion.

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> "It is clear that the amendment of 1904 embraces but one subject, viz., the establishment of local municipal government in the city of Chicago, and as the amendment was designed to confer legislative power upon the General Assembly to establish local municipal government in the city of Chicago, we think the amendment was properly proposed to article 4," etc.

We submit that the language above quoted clearly means that whatever legislation the General Assembly may enact granting any powers of which the city may avail in its local municipal government, is an act based upon said Section 34 and must be approved by a majority of the legal voters of the City of Chicago.

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> "It would seem equally clear that the obtaining of revenue with which to pay the indebtedness of the city and with which to maintain a local municipal government in the city of Chicago was germane to the organization of such municipal government, as local municipal government in said city could not exist without revenue with which to pay its existing indebtedness and to maintain in the city local municipal government. If it be conceded that local municipal government is the object sought to be accomplished by the amendment of 1904, as it must be, then to create a municipal court, to abolish courts whose jurisdiction conflict with said court and to provide for raising revenue to supply the city's needs must, we think, also be conceded to be matters germane to that object."

In harmony with the foregoing is what appears in the opinion in the case here involved, where the State Court (Tr. 13) says:

> "It is true, as appellant urges, that no law based upon section 34 of article 4, affecting the municipal government of Chicago can take effect until such

> law has been consented to by a majority of the legal voters of the city voting on the issue at an election duly held. (*People* v. *Gill,* 358 Ill. 261; *People* v. *City of Chicago,* 310 *id.* 534.) Similarly, it is established that the constitutional requirement for the consent of the legal voters does not depend on whether the law is general or special. (*Ptacek* v. *Coleman,* 364 Ill. 618; *People* v. *City of Chicago, supra.*) As we recently observed in *City of Chicago* v. *County of Cook,* 370 Ill. 301: 'The net result of section 34 of article 4 is that, so far as the municipal government of the city of Chicago is concerned, it did away with the limitation as to local or special laws, and that of uniformity, and imposed another, that of a referendum.' * * * The plain, unequivocal language of section 34 of article 4 prescribes that those laws based upon this amendment affecting the municipal government of the city shall take effect only when consented to by a majority of the legal voters at a regular election."

The index hereto will of course enable the Court to determine which of the questions argued you desire to examine.

While we discuss several questions in this brief, if this Court agrees with the rule that where a constitution classifies municipalities, the legislature is precluded from making any classifications, as that rule is announced in *City* v. *Vandemark,* 100 Ohio State 365, and repeated in numerous other cases cited, it will dispense with the consideration of most of the other questions discussed, inasmuch as the classifications employed in each of the acts in question will be in contravention of the Fourteenth Amendment and void.

ARGUMENT.

I.

When the Constitution classifies municipalities or authorizes the legislature to make certain specific classifications, each is in turn exclusive of all others, and the legislature may not go beyond the classification embodied in the Constitution or beyond that which the Constitution expressly authorizes the legislature to make. The legislature may not by addition, subtraction or modification affect what the Constitution has provided.

That when Section 34 of Article IV segregated the City of Chicago from all other municipalities, and placed it in an isolated position or class by itself for the purposes of local municipal government, the effect was to deny to the General Assembly all power to classify the City of Chicago in matters pertaining to its local municipal government.

The General Assembly is the legislative agent of the people of Illinois created by the people through the medium of the Constitution.

That the General Assembly may in anywise exercise control over the instrument of its creation is a proposition that speaks its own refutation.

The General Assembly of Illinois by each of the Pension Acts here involved, has pretended to place the City of Chicago in a class with other cities having a population of 200,000 or more for the purpose of taxation for local municipal government, and by the Tax Levy Act did the same thing on the basis of 150,000 population. Said constitutional Section 34 has segregated the City of Chicago from all other cities and villages in the state, and has placed it in an isolated

position or class by itself for the purpose of taxation concerning its local municipal government. The Constitution and the four acts in question are repugnant to each other. Either the Constitution or the four acts must give way. The Supreme Court of Illinois has in effect asserted that the constitutional classification is subordinate to the classification contained in the four acts in question. This assertion is so startling and revolutionary as to provoke the challenge of want of due process of law and, we submit, should receive the consideration of this Court at the earliest possible moment.

Our investigation does not disclose to us any instance in which this Court has been called upon to rule upon the precise question here involved. The Ohio Courts have had the identical question before them on at least two occasions.

In *City* v. *Vandemark,* 100 Ohio State 365, the Court deals with the subject of a constitutional classification excluding any classification by the legislature. While that case dealt with the constitutional classification of all cities and villages and we are here concerned with the constitutional classification of the City of Chicago only, the principle announced clearly applies to the situation here involved. In that case, at page 371, the Court says:

> "The constitutional convention retained the provision that 'General laws shall be passed to provide for the government of cities and villages,' substantially as in the former constitution, but in furtherance of its manifest and clearly expressed purpose to take from the legislature the power theretofore exercised by it relative to the government of the municipalities of the state and to confer such powers of local self-government directly upon the municipalities themselves the constitution provides in Section 1, Article XVIII, that 'Municipal corporations are hereby classified into cities and villages.

All such corporations having a population of 5,000 or over shall be cities; all others shall be villages. The method of transition from one class to the other shall be regulated by law.' It is to be observed that the constitutional convention not only did not confer any power whatever upon the legislature to make any classification of municipalities, *but it denied the legislature such authority by retaining and exercising that jurisdiction itself.* It thereby withheld that subject absolutely and entirely from legislative control and permitted it to be no longer a matter of statutory jurisdiction. The general assembly has no power to enlarge or limit a jurisdiction specifically conferred by the constitution. (*The Cincinnati Polyclinic* v. *Balch,* 92 Ohio State 415.) It seems equally clear that a jurisdiction assumed and exercised by the constitution itself cannot be exercised also by the legislature in the absence of authority conferred upon it so to do by express and explicit provision of the constitution."

Speaking further at page 372, the Court says:

"It having been declared by the constitution that the municipalities of the state should be classified upon the basis of population, into cities and villages, it must be presumed that it was intended that there should be no further classification for the purpose of legislation affecting municipal government."

In *City* v. *Endly,* 38 Ohio State 528 at page 534, the Court quotes approvingly from *City* v. *Vandemark, supra,* and then says:

"This being true, we are of opinion that it is not a question of whether the act is general or special, for all legislation pertaining to municipal government which has for its basic principle a classification of cities is forbidden, and such an act cannot be justified even if it has a general and uniform operation. This court is not inclined, in face of the people's mandate, to write that in a constitution which the people have failed or refused to do. If

> the law should be enlarged so that general classification acts may be enacted, that is the sole prerogative of the people themselves, and we have no disposition to countenance an exercise of that withheld power which would no doubt afford encouragement to further legislative enactments thereon and a violation of the plain intent of the constitution makers and the sovereign power who adopted municipal home rule. We can but remember that prior to amendment it was under the guise of a general law that classification reached its absurd zenith."

We respectfully submit that in these two Ohio cases, we have decisions squarely holding exactly what we contend is the law.

Those two cases are identical in principle with the case here presented to this Court for its consideration. The only factual difference between the Ohio cases and this case is that the Ohio cases involve a constitutional classification of all municipalities, while this case involves the classification embodied in Section 34 of Article IV of the Illinois Constitution, whereby the City of Chicago is segregated from all other cities and put into an isolated position or class by itself.

If, as held in the Ohio cases, the legislature is by the constitutional classification there involved precluded from all classification of municipalities, for the purpose of local municipal government, by the same logic and reasoning the General Assembly of Illinois is precluded from making any classification involving the City of Chicago, so far as local municipal government is concerned.

Other cases in keeping with the Ohio cases are:

Kansas City v. *Stegmiller,* 151 Mo. 189.
Mlyton v. *Borden,* 164 Mo. 221.
State v. *Mason,* 153 Mo. 23.
St. Louis v. *Dorr,* 145 Mo. 466.

Murnane v. *St. Louis,* 123 Mo. 479.
Fragley v. *Phelen,* 126 Cal. 383.
Mintzer v. *Shilling,* 117 Cal. 361.

While no Illinois case determines the question here involved so squarely as do the two Ohio cases, to which we have just referred, *People* v. *Election Commissioners,* 221 Ill. 9, does determine the question, in principle. In that case, at page 21, the Court said:

> "Section 3 of article 4 of the constitution fixes the eligibility for office of a senator or representative, and the only requirement as to residence is that he shall have resided for two years next preceding his election within the senatorial district. The act adds a new qualification and imposes a new restriction upon the candidates and the voters, by requiring that the candidates shall come from particular counties of the district. It is not within the power of the legislature to add to the qualifications fixed by the constitution or to impose the additional restrictions, and that provision of the act must be considered void."

By the same token it is not within the power of the legislature to place Chicago in a classification other than that in which the Constitution has placed it.

The opinion then at page 23 continues:

> "In view of the well known evils of local and special legislation, the people provided, in section 22 of article 4 of the constitution, that the legislature should not pass local or special laws in any of a considerable number of enumerated cases, among which were laws regulating county and township affairs. The section contains a general prohibition against a special law in any case where a general law can be made applicable, but the general provision is addressed to the judgment and discretion of the legislature. In the enumerated cases the people saw fit to make a rule which could not be disregarded or evaded under any pretext. * * * The

act is divided into two broad divisions, one of which is to be in force only in Cook County and the other applies only to the rest of the State outside of Cook County. In effect there are two acts. The first sixty-four sections seem to apply, in general terms, to the State at large, but section 65 provides that in all counties having a population of 125,000 or more the subsequent sections only shall apply, except as thereinafter provided. Cook County is the only county in the State having a population of 125,000 or more, and there is no other county that could have been expected by the legislature to reach that population at any time in the near future. It would make no difference, however, if other counties besides Cook were included with it in the classification provided for by the act. * * * The situation has no relation whatever to political rights. The sections of the act numbered 65 to 119 inclusive apply only to Cook County, and it was not in the contemplation of the legislature that they could apply to any other. There is, perhaps, no local or special object of legislation which may not be covered by general language, but if the language used can only be applied to one county it means that county. The substance and effect of an act determine its character and not merely the form of language employed, and this act constitutes one law for Cook County and another for the State at large outside of that county."

The facts involved in this case make it quite to the point, especially so, because no city other than Chicago has over 105,000 population (Tr. 7), and none will attain a population of 200,000 within the next twenty-five years (Tr. 8), while Chicago now has a population of 3,390,000.

People v. *Weston,* 358 Ill. 610, involved an act passed by the General Assembly falling within the sphere of Section 12 of Article X of the Constitution concerning classifications. The Court held that the legislative act

attempted to classify, which it was precluded from doing by reason of the constitutional classification, and cited *People* v. *Gaulter*, 149 Ill. 39.

People v. *Vickroy,* 266 Ill. 384, is another case which involved the same constitutional provisions which were before the Court in the case last above referred to, and the decision in the *Vickroy* case is in harmony with the case last above cited.

In *People* v. *McCormick,* 261 Ill. 413, it appears that the Constitution of Illinois provides that no person shall be eligible to the office of County Commissioner of Cook County, who has not resided in the state for one year. The legislature undertook by statute to impose additional conditions for election to the office. The Court, at page 424, said:

> "The expression of the disabilities specified excludes others. The declaration in the constitution that certain persons are not eligible to office implies that all other persons are eligible."

In *Consolidated Coal Company* v. *Miller,* 236 Ill. 149, it appears that Section 3 of Article IX of the Constitution of Illinois authorizes the legislature to exempt from taxation by general law, the property of states, counties and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for school, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. The General Assembly undertook by a statute to make an exemption not specified in the Constitution. At page 152, the Court said:

> "In the construction of statutes the rule is, that an enumeration of certain specified things excludes all others not therein mentioned, and in the case of *People's Loan and Homestead Association* v. *Keith,* 153 Ill. 609, that rule was applied to the enu-

meration in section 3 of certain specified property which may be exempted by general law, and it was there determined that such enumeration is a clear limitation upon the power of the legislature to exempt any other property. The capital stock of the appellant is property, (*The Hub* v. *Hanberg,* 211 Ill. 43,) and such capital stock does not come within the enumeration of property which the legislature is permitted to exempt from taxation. It follows that the exception contained in paragraph 4 of section 1 of the Revenue act is in conflict with the constitution and void."

The Supreme Court of Illinois in *Pettibone* v. *West Chicago,* 215 Ill. 304, 333, held that the act there involved was local and special, and applied to the Town of West Chicago alone although said town was not mentioned by name. Nevertheless, the description embodied in the act was such as to identify the town with certainty.

The Court held that the means employed in the act were a mere device to evade the constitutional provision prohibiting special legislation, citing in support of its conclusion, *Devine* v. *Cook County Commissioners,* 84 Ill. 590, and *Strong* v. *Dignan,* 207 Ill. 385.

By the same token, inasmuch as the acts in question employ a bogus classification which is applicable to no city other than the City of Chicago, said acts and each of them apply to the City of Chicago alone and each of them must therefore be approved by a referendum before becoming effective in the City of Chicago.

The rule that the expression in a statute or constitution of one thing is to the exclusion of all others is a rule so universally recognized that little should be said by us on the subject.

The rule above referred to is stated in *People* v. *Wiersema State Bank,* 361 Ill. 75, where, at page 85, the rule is stated thus:

> "The rule that the expression of one thing or one mode of action in an enactment excludes any other, even though there may be no negative words prohibiting it, has been the settled law of this state since 1872. *Sammis* v. *Clark,* 13 Ill. 544; *Vestal Co.* v. *Robertson,* 277 *id.* 425."

In *Vestal Co.* v. *Robertson,* 277 Ill. 425, the Court approved the proposition above stated, and in so doing, at page 429, said:

> "The doctrine was also announced and approved in the case of *Diversey* v. *Smith, supra,* that an affirmative statute introductive of a new law which directs a thing to be done in a certain manner means that such thing shall not be done in any other manner, even though there be no negative words prohibiting it."

Applying this rule to Section 34 of Article IV, we take it to clearly mean that when said section segregates Chicago from all other municipalities and puts it in a class or position by itself for the purposes of local municipal government, it means that such constitutional classification shall be exclusive of all legislative classifications.

As acts requiring in each instance, a classification upon which to base them, we submit that as to the City of Chicago the acts in question are and each of them is a nullity because, as above pointed out, the City of Chicago is not subject to legislative classification for the purpose of tax levies concerning local municipal government.

As acts predicated upon Section 34 of Article IV, they are void,

(*a*) Because they do not nor do any or either of them provide for a referendum as said Section 34 requires.

People v. *City,* 310 Ill. 534, 540.

(*b*) Regardless of a provision contained in the acts themselves in each instance, they have no effect in the City of Chicago because they have not nor have any of them been approved by a majority of the legal voters of the City of Chicago, as required by Section 34 of Article IV.

Ptacek v. *Coleman,* 364 Ill. 618.

We therefore respectfully submit that both upon reason and authority, it must be definitely said that the General Assembly was and is absolutely without power to make a classification including within it the City of Chicago, and that its attempts here involved so to do are void.

The only possible theory upon which the acts involved could be sustained would be that it was the legislative intent to have them apply to the City of Chicago alone, and referred to the City of Chicago by description instead of by name. Upon this theory, the acts might be said to be valid if a failure to provide therein that they must be submitted to a referendum before they become effective in the City of Chicago is not essential to their validity. While this would leave the acts valid, it would leave them without effect in the City of Chicago unless and until they are submitted to a referendum and receive a majority of the votes cast by the voters of Chicago.

We next discuss classification regardless of the fact that the City of Chicago is not subject to any legislative classification.

II.

The pretended classification involving the Tax Levy Act here under consideration is arbitrary and capricious. The basis of classification—a population of 150,000 bears no reasonable or just relationship to the objects sought to be accomplished—the levy and collection annually of $37,000,000 in taxes.

The classification involved in each and all of the pension acts is arbitrary and capricious. The basis of classification—a population of 200,000 bears no reasonable or just relation to the objects of the acts—the levy of taxes with which to pay pensions. There are many classes of municipal employes throughout the State of Illinois, for whom no pension provisions are made who are as justly entitled thereto as are the employes involved in the three acts in question. There is no necessity for the classification of municipalities for the purpose of the payment of pensions to their respective employes inasmuch as there is as much need for pensions being paid to municipal employes in municipalities of less size as there is in a municipality of 200,000 or more population.

The pretended classification in each instance is made for the sole purpose of singling out the City of Chicago as the only municipality that can possibly be affected by the acts involved or any or either of them, and to deceive the public and the courts in the belief that said acts involve classification, when their real purpose was to identify the City of Chicago without mentioning it by name, with the hope of avoiding a submission of said acts and each of them to a referendum vote in compliance with Section 34 of Article IV of the State Constitution. There is no necessity for any of the pretended classifications.

The Tax Levy Act assumes to make a population of 150,000 the basis of a classification whereby any municipality supposedly in the class may levy annually taxes in the amount of $37,000,000. As we understand the

rule to be, there must be a necessity for the classification involved in the statute. We naturally, therefore, inquire what necessity is there for the levy by a municipality with a population of 150,000 of taxes amounting to $37,000,000? Another rule which seems to be quite universally established is that there must be a reasonable relationship between the basis of classification and the object sought to be attained, by the act involving the classification. We again inquire what is the reasonable relationship between a municipality of 150,000 population and a tax levy annually of $37,000,000? Let us consider the facts. The City of Chicago has a population of 3,390,000. No other municipality in the state has a population of over 105,000, but assuming, for the purpose of discussion, although denying as a matter of fact, that some municipality will, some day within the reasonably near future, have a population of 150,000, we note that the City of Chicago has an assessed valuation of $2,073,000,000. It requires a tax rate of 1.784012 per centum applied to the $2,073,000,000 to produce a tax of $37,000,000. We think it is fair to assume that there is a reasonable relationship between the population of a municipality and the assessed valuation of the property within it, and upon the assumption that the ratio existing in Illinois would be substantially the same ratio in a municipality of 150,000 population as in Chicago with a population of 3,390,000, it would give that municipality a valuation of not to exceed $100,000,000, and it would require a tax rate of 37 per centum to produce $37,000,000 in taxes. It seems that $37,000,000 of taxes is quite sufficient to serve the corporate purposes of the City of Chicago for one year. On the basis of population, it should take about one twenty-second of that amount to serve a municipality of 150,000 for one year or about $1,700,000.

If a fixed rate of 1.29 were to be employed and ap-

plied to this pretended class on the basis of $100,000,000 valuation for the municipality of 150,000, it would produce a tax of $1,290,000 as compared to the lump sum levy proposed of $37,000,000.

We note by the Tax Levy Act in question that a municipality of less than 150,000 may employ a tax rate of only two-thirds of one per cent. Consequently, if a municipality of 149,900 population levied the full limit accorded to it by the act in question, it would levy a little less than $666,666 compared to the $37,000,000 that the 150,000 population municipality coming within the pretended class fixed by the statute could levy, so that a difference of 100 in population would make a difference in tax levy of a little over $36,300,000.

Devine v. *Cook County Commissioners,* 84 Ill. 590, involved an act permitting the issuance of bonds for the erection of a court house on the site heretofore used for that purpose in a county of over 100,000 inhabitants.

The Court, at page 592, said that it would take judicial note that no county in the state contains over 100,000 inhabitants, and that it could not be expected, by any ordinary influx or increase of population, that any county would have that population within the brief period of six years fixed by the act as the duration of the law.

The Court, in passing upon the validity of the act as a violation of Section 22 of Article IV of the State Constitution, said:

> "No express words that could have been used by the General Assembly could limit the operation of the law to the county of Cook more absolutely and definitely than those employed."

The Court also said that designating counties as a class according to a minimum population, which makes it absolutely certain but one county in a state can avail

of the benefits of a law applicable to such class, cannot but be regarded as a mere device to evade the Constitution forbidding special legislation.

The Court further said:

> "Power is given the General Assembly to classify counties by population and to regulate by general law fees and salaries of certain local officers, according to class. But that is a grant of power for a specific purpose indicated, and it would seem to be a restriction upon the power to classify counties by population or otherwise, for any purpose not mentioned in the constitution."

If, as the Court said, that six years as the duration of an act was so short a time that it did not admit of any accretion to the class of 100,000 fixed by the statute, then with far greater force it may be said in this case that inasmuch as part of the Tax Levy Act, *viz.,* that referring to taxes for the years 1934 and 1935, must be availed of on or before the first day of September, 1935, and the act went into effect on the first day of July, 1935, it left but two months for populations to increase so that any municipality could come into the class, thereby rendering the Tax Levy Act one referring to the City of Chicago, alone.

In *People* v. *Crawley,* 274 Ill. 139, the Court, at page 142, said:

> "The general principles governing the construction of constitutions are the same as those that apply to statutes. (*People* v. *Hutchinson,* 172 Ill. 486.)"

In the case last cited, the Court, at page 145, said:

> "If it cannot be done by this law, then a law which by its words seemed to apply to all cities having such provisions would not be constitutional if, in fact, it only applied to the city of Jackson-

> ville, for this court has more than once held that a statute general in its terms but applicable only to one single locality was special and not general."

People v. *Cooper,* 83 Ill. 585, like the proceeding here involved, was a tax case. At page 591 of the opinion the Court made the pertinent remark:

> "If the act must necessarily produce a result clearly and unquestionably forbidden by the constitution, it cannot be upheld, whatever may be its form or profession."

In *People* v. *Jarecki,* 363 Ill. 180, the Court had before it an act providing that delinquent taxes might be paid in seven annual installments in counties containing 500,000 or more inhabitants. At page 184, the Court said:

> "The remaining question involved in this point is whether this act is general, or special and local. We take judicial notice that Cook County alone has a population of 500,000, and that the second county in size in this state (St. Clair) has less than 158,000 inhabitants."

At page 185, the Court said:

> "No reason is stated in the act, and none is presented, to justify a different treatment of delinquent taxes on real estate in Cook County from that in force throughout this State. This act violates section 22 of article 4 and is void."

In *Knopf* v. *The People,* 185 Ill. 20, the Court, in speaking of the effect of Section 22 of Article IV, at page 26, says:

> "As to certain subjects, however, the People, in the fundamental law, made a hard and fast rule, not subject to any condition or exception, prohibiting the enactment of special or local laws. Section 22 of article 4 of the constitution prohibits the General Assembly from passing local or special

> laws in certain enumerated cases. As to those subjects the prohibition is absolute, and not conditional. Among them is, 'incorporating cities, towns or villages, or changing or amending the charter of any town, city or village,' which is violated by section 49. * * * Within the enumerated subjects Cook County cannot be singled out for legislation on the ground that its circumstances and conditions are different from other counties, nor can the city of Chicago be singled out and separated from other cities of the State and made the subject of special legislation."

The act involved in the case last referred to was based upon a classification of 125,000 population.

Speaking of the basis of classification, in *People* v. *Knopf,* 183 Ill., at page 420, the Court said:

> "That the rule is that a classification cannot be adopted arbitrarily upon a ground which has no foundation in difference of situation or circumstances of the municipalities placed in the different classes. There must be some reasonable relation between the situation of municipalities classified and the purposes and objects to be attained. There must be something, in the nature of things, which in some reasonable degree accounts for the division into classes."

The opinion of the Supreme Court of Illinois says (Tr. 14):

> "The acts assailed by appellant are general laws, and do not purport to be based upon section 34 of article 4, nor to affect only the municipal government of Chicago."

As we believe we have fully established elsewhere, the laws in question and each of them are not general laws, but are local and special, and intended to be available only to the City of Chicago. The pretended classifications employed are transparent and clearly indicate that

none of said laws have or can have any application to any city or village other than Chicago, within any reasonable period following their passage.

But why does the Court take the trouble to call them general laws in view of the fact as the Court in its opinion at the preceding page 13 of the transcript says:

> "Similarly, it is established that the constitutional requirement for the consent of the legal voters does not depend on whether the law is general or special. (*Ptacek* v. *Coleman,* 364 Ill. 618; *People* v. *City of Chicago, supra.*) As we recently observed in *City of Chicago* v. *Cook County,* 370 Ill. 301, 'The net result of section 34 of article 4 is that so far as the municipal government of the city of Chicago is concerned, it did away with the limitation as to local and special laws and that of uniformity, and imposed another, that of a referendum."

From the foregoing, it necessarily follows that even if the laws in question and each of them were general laws, they must still be submitted to a referendum before they could take effect in the City of Chicago. They were not submitted to a referendum and have not nor have any or either of them taken effect in the City of Chicago, and they do not nor do any or either of them constitute authority to the City of Chicago to make any of the tax levies here complained of.

Following the language of the Supreme Court Opinion (Tr. 14), which we first quoted, we find the following:

> "Manifestly, the General Assembly may enact legislative legislation affecting the city of Chicago other than by statute based upon section 34 of article 4."

This statement is a truism provided said legislation does not pertain to the local municipal government of

the City of Chicago. Likewise, it is utterly foreign to any of the issues involved in this case.

No doubt, many laws may be enacted affecting Chicago that need not be submitted to a referendum. Conversely, no law may be enacted affecting the local municipal government of the City of Chicago and become effective in the City of Chicago, until it is approved by a majority of the legal voters of the City of Chicago.

The unqualified fact is that Section 34 of Article IV clearly sets forth as one of the powers of municipal government to be granted by the General Assembly to the City of Chicago, the power to "provide for the assessment of property and the levy and collection of taxes within said city for corporate purposes," (Petition herein, page 3) and such is the decision of the state court in *City* v. *Reeves,* 220 Ill. 274, at page 282.

All of the acts here involved pertain to taxation for corporate purposes, and they are, therefore, based upon Section 34 of Article IV, even if contrary to the fact it serves a purpose to term them general laws. Under the provision of Section 34, the legislature may enact laws, local, special or general, to establish a system of local municipal government for the City of Chicago, but such laws do not take effect in the City of Chicago until approved by a majority of the voters of the City.

What is said in the opinion (Tr. 14) concerning the Municipal Court of the City of Chicago throws no light upon the questions involved in this case, and serves only to create confusion.

The opinion says (Tr. 15):

> "It does not follow as appellant urges that every act remotely affecting the municipal government in the city of Chicago must likewise be submitted to a referendum."

We have not urged and do not now urge any such ridiculous proposition.

The opinion concludes in part:

> "We hold that the amendment to the constitution, section 34 of article 4, is not a bar to the challenged statutes, and that the General Assembly was empowered to enact them." * * *

Passing, for the moment, the question of the necessity for a provision in each of the acts in question, requiring their submission to a referendum before they become effective in the City of Chicago, and treating the acts in their true light as laws intended to apply to the City of Chicago only, Section 34 of Article IV authorizes the acts here involved and each of them, but that alone does not give them effect in the City of Chicago.

We submit that there is no lawful viewpoint from which the acts in question can be considered as being in effect in the City of Chicago and therefore the tax levies in question and each of them are without due process of law, violate the Fourteenth Amendment to the Federal Constitution and that said levies are void.

III.

While legislative classifications are permissible under the Fourteenth Amendment to the Federal Constitution, they will not be tolerated unless there is a real necessity therefor. They must be reasonable and just. There must be a natural relationship between the classification made and the object sought to be accomplished by the legislation based upon the classification. They must not be arbitrary.

Any classification that is arbitrary and capricious is lacking in due process and violates the Fourteenth Amendment of the Federal Constitution. Mere differences constitute no basis for classification.

In *Louisville Gas Company* v. *Coleman,* 277 U. S. 32, this Court, in speaking, at page 37, concerning the right of a state to classify for the purposes of taxation, says:

> "the power of the state to classify for purposes of taxation is of wide range and flexibility, provided, always, that the classification 'must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike. *Royster Guano Co.* v. *Virginia,* 253 U. S. 412, 415; *Air-Way Corp.* v. *Day,* 266 U. S. 71, 85; *Schlesinger* v. *Wisconsin,* 270 U. S. 230, 240. That is to say, *mere* difference is not enough; the attempted classification 'must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.' *Gulf, etc.* v. *Ellis,* 165 U. S. 150, 155."

Speaking first of the three Pension Acts, we submit that legitimate pension acts are based upon long and faithful service and not upon population, and that there is no necessity on the one hand, or reason on the other, why a municipal employe of a city of 200,000 should receive a pension any more than there is why one of 100,000, 75,000, 50,000 or 25,000 should receive a pension, and that, therefore, a classification on the basis of 200,000 for pension funds is purely arbitrary and capricious.

We submit further that there is no natural relationship between a population of 200,000 and the payment by the municipality of such population of a pension to its employe or any class of them.

Other cases bearing upon this subject, are:

Magoun v. *Illinois Trust and Savings Bank,* 170 U. S. 283, 293.

Truax v. *Corrigan,* 257 U. S. 312.

Southern Railway Company v. *Greene,* 216 U. S. 400, 417.

Gulf, Colorado & Santa Fe Railway v. *Ellis,* 165 U. S. 155.

In this last mentioned case, the Court, at page 155, said:

> "These are distinctions which do not furnish any proper basis for attempted classification. That must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the class is proposed, and can never be made arbitrary and without any such basis."

And at page 156, the Court said:

> "We conclude, upon a review of the cases referred to above, that, whether a statute be public or private, general or special, in form, if it attempts to create distinctions and classifications, between the citizens of this state, the basis of such classification must be natural and not arbitrary."

And, again, at page 159, the Court said:

> "But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this."

Speaking further at page 165, the Court said:

> "It is apparent that the mere fact of classification is not sufficient to relieve a statute from the reach of the equality clause of the Fourteenth Amendment, and that in all cases, it must appear not only that a classification has been made, but also that it is one based upon some reasonable ground—some difference which bears a just and proper relation to the attempted classification—and is not a mere arbitrary selection. Tested by these principles the statute in controversy cannot be sustained."

Another case bearing upon this subject is, *Quaker City Cab Co.* v. *Pennsylvania,* 277 U. S. 389, where the

Court dealt with a situation quite like that here presented in principle, and in speaking of the Fourteenth Amendment, at page 400, said:

> "The equal protection clause does not detract from the right of the State justly to exert its taxing power or prevent it from adjusting its legislation to differences in situation or forbid classification in that connection, 'but it does require that the classification be not arbitrary but based on a real and substantial difference having a reasonable relation to the subject of the particular legislation.' *Power Co.* v. *Saunders,* 274 U. S. 490, 493. * * *
>
> But, in any event, a characterization of the tax by the state court is not binding here. * * * No doubt there are situations in which, as appears in *Cudahy Packing Co.* v. *Minnesota,* 246 U. S. 450, and other cases, a percentage of gross earnings may be taken as a tax on property used in the business and properly may be deemed not to be a tax or burden on such earnings. But the practical operation of the section is to be regarded, and it is to be dealt with according to its effect. *Frick* v. *Pennsylvania,* 268 U. S. 473. *Panhandle Oil Co.* v. *Mississippi, ante,* p. 218."

Coming now to the Tax Levy Act, we note that it is based upon a population of 150,000 or more. The act authorizes a municipality of the required population to levy taxes at the rate of 1.29 per centum or for the sum of $37,000,000, whichever may be the greater.

Had the act stopped at granting a power to tax at a rate of 1.29 per centum, it would have presented a case entirely different from that in fact presented by the alternative authority of levying a tax for the flat sum of $37,000,000.

We respectfully submit that the act now under consideration gives to a city of 150,000 population power to levy the same amount in taxes that it gives to a city of

3,390,000 population. We submit that a mere statement of the proposition impels its re[illegible]tation.

Clearly, there can be no pos[illegible]ible relationship between a municipality of 150,000 population and the power to raise $37,000,000 annually in taxes. Had the act stopped at the rate of 1.29 per centum, the relationship of the rate to the assessed valuation of municipalities of varying populations would probably produce results that would be reasonable.

There must necessarily be some close relationship between population and the assessed valuation, but when we eliminate the assessed valuation from the equation, and involve only the two elements of a population of 150,000 or more and $37,000,000 in taxes, the classification becomes purely arbitrary and capricious, and is repugnant to the due process provision of the Fourteenth Amendment.

The General Assembly could, by virtue of Section 34 of Article IV of the State Constitution, have granted to the City of Chicago by name the powers embodied in the act now under discussion. That act, however, would not be effective in the City of Chicago until approved by a majority of the legal voters of the City of Chicago.

An act consolidating with the City of Chicago other taxing bodies and granting to the city upon such consolidation, a rate of 1.35 per centum, was passed and submitted to a referendum in 1916, and was rejected by the voters.

State Bar Association Revised Statutes of 1939, page 419.

Although the act provided that if rejected, it might be again submitted, it was not again submitted to the voters.

This may account for the legislature designating the

City of Chicago by description instead of by name in the hope that the public and the courts could be deceived by the camouflage and led to believe that the act was a legitimate classification for the purposes of taxation.

No city other than Chicago will have a population of 200,000 within twenty-five years (Tr. 8).

This Tax Levy Act provides that said additional taxes for 1934 and 1935 may be levied at any time subsequent to July 1st, 1935, and prior to September 1st, 1935. Necessarily, no municipality could come into this alleged class of 150,000 or more population at any time after Sepetmber 1, 1935, and enjoy the privileges of the act with reference to 1934 and 1935, tax levies of $31,925,000 and $36,000,000, respectively. Said classification is, therefore, a delusion and a snare, It is not real or genuine, but is wholly unfounded and without any reasonable basis upon which to predicate it.

This is made all the more apparent when we observe that a city of a hypothetical population of 150,000, and Chicago of over 3,000,000 population are put on the same plane in so far as the amount of taxes, which they are empowered to levy is concerned. Both are empowered to levy $37,000,000 for 1936 and annually thereafter.

By the same population basis of comparison, if $37,000,000 will adequtaely care for the corporate needs of Chicago, it would take care of twenty cities of a population of 150,000 each.

By an amendment to the act in question in 1939, all possibility of any city or village coming into the class was again forever foreclosed by said amendment increasing the population, made a prerequisite to membership in the class, to 500,000. If no city, aside from Chicago, will have a population of 200,000 within tewnty-five years, it seems reasonable to say that none will have a

population of 500,000 within one hundred and twenty-five years. This is particularly true in view of the fact that no city, other than Chicago, is so fortuitously situated as to have an unusual accretion to its population.

In *Southern Railway Co.* v. *Greene,* 216 U. S. 400, the Court, at page 412, says:

> "The federal constitution, it is only elementary to say, is the supreme law of the land, and all its applicable provisions are binding upon all within the territory of the United States. Whenever its protection is invoked, the courts of the United States, both state and federal, are bound to see that rights guaranteed by the federal constitution are not violated by legislation of the state."

It will be noted that the state court in its opinion wholly failed to pass upon the proposition that the acts in question and each of them violated the Fourteenth Amendment to the Federal Constitution. What is said by this Court in that connection may, therefore, be of interest.

And in speaking on the subject of classification, this Court in the same case at page 417, said:

> *"While reasonable classification is permitted, without doing* violence to the equal protection of the laws, such classification must be based upon some real and substantial distinction, bearing a reasonable and just relation to the things in respect to which such classification is imposed; and classification cannot be arbitrarily made without substantial basis. Arbitrary selection, it has been said, cannot be justified by calling it classification. *Gulf, Colorado & Santa Fe Ry.* v. *Ellis,* 165 U. S. 150, 155, 165; *Cotting* v. *Kansas City Stock Yards Co.,* 183 U. S. 79; *Connolly* v. *Union Sewer Pipe Co.,* 184 U. S. 540, 559."

We submit that each and all of the classifications here involved are shown upon their faces to be arbitrary.

However, there is evidence (Tr. 8) that no municipality in Illinois, aside from Chicago, will have a population of 200,000 within the next twenty-five years.

In *Borden's Co.* v. *Baldwin,* 293 U. S. 194, this Court, at page 210, says:

> "Still, the statute may show on its face that the classification is arbitrary (*Smith* v. *Cahoon,* 283 U. S. 553, 567) or they may appear by facts admitted or proved. *Southern Ry. Co.* v. *Greene,* 216 U. S. 400, 417; *Air-Way Electric Corp.* v. *Day,* 236 U. S. 71, 85; *Concordia Insurance Co.* v. *Illinois,* 292 U. S. 535, 549."

We submit that each and all of the classifications here involved fail to comply with the standards of classification prescribed by this Court, they render each and all of the acts in question repugnant to the Fourteenth Amendment to the Federal Constitution and void; that as the said acts are the sole basis for the tax levies complained of it leaves said levies without authority and void.

Par. 123, Chap. 24, Ill. State Bar Statutes, 1939.
Par. 496, Chap. 46, Ill. State Bar Statutes 1939.
Par. 505, Chap. 37, Ill. State Bar Statutes 1939.
Par. 1108, Chap. 24, Ill. State Bar Statutes 1939.

IV.

Section 34 of Article IV is a grant of power to the General Assembly to in turn grant powers to the City of Chicago constituting a scheme or charter of local municipal government. Under the well established rule of construction that the expression of one thing is to the exclusion of all others, said Section 34 embodies all of the power that the legislature possesses to legislate concerning the powers of local municipal government. Under this constitutional grant to the General Assembly, taxation is expressly made a power of local municipal government. Consequently, inasmuch as each of the acts in question involves the power of taxation for the purposes of local municipal government of Chicago, none of said acts can take effect until approved by a majority of the legal voters of said city.

That Section 34 of Article IV is a grant of power is so unqualifiedly apparent as not to admit of dispute. The initial language of that section is,

> *"The General Assembly shall have power,* subject to the conditions and limitations hereinafter contained to pass any law (local, special or general) providing a scheme or charter of local municipal government for the territory now or hereafter embraced within the limits of the city of Chicago."

That Section 34 is a grant of power to the General Assembly is determined in *City* v. *Reeves,* 220 Ill. 274, where, at page 298, the Court said:

> "It is clear that the amendment of 1904 embraces but one subject, *viz.,* the establishment of local municipal government in the city of Chicago, and as the amendment was *designed to confer legislative power upon the General Assembly to establish local municipal government in the city of Chicago,* we think the amendment was properly proposed to article 4," etc.

The first part of the language last above quoted has the force of determining that the various subjects set forth in Section 34 under several numbers must pertain to local municipal government, because, as the Court above said, Section 34 embraces but one subject, the establishment of local municipal government.

It results that when by the third enumeration in Section 34, it is set forth, that the General Assembly may provide for the assessment of property and the levy and collection of taxes within said city for corporate purposes, it irretrievably binds to the local municipal government the power to levy and collect taxes. This fact is emphasized by a later part of the opinion where, at page 302, the Court said:

> "It would seem equally clear that the obtaining of revenue with which to pay the indebtedness of the city and with which to maintain a local municipal government in the city of Chicago was germane to the organization of such municipal government, as local municipal government in said city could not exist without revenue with which to pay its existing indebtedness and to maintain within the city local municipal government."

The state court in the opinion here involved does not utter a word in refutation of what is said in the case last cited, leaving what is said in that case as the established law of Illinois, which has existed for about thirty-five years.

In *People* v. *City,* 310 Ill. 534, at page 539, the Court said:

> "The amendment of the constitution (section 34 of article 4) *authorized* the General Assembly to pass any law, local, special or general, providing a scheme or charter of local municipal government for the city of Chicago."

Here again, we have it clearly stated that Section 34 of Article IV is an authorization or grant of power to the General Assembly to provide a scheme or charter of local municipal government for the City of Chicago, and in the same opinion, the proposition that Section 34 confers or grants power to the General Assembly is emphasized at page 540, where it is said:

> "The intention of the amendment is manifestly that the *powers conferred by it on the General Assembly* shall be exercised subject to the right of the people of the city to reject the result. The General Assembly has not the final power, but its legislation, so far as it is based on this amendment, is subject to a veto by an adverse popular vote."

In speaking of the adoption of Section 34 of Article IV, the Court, in *Swigart* v. *City of Chicago,* 223 Ill. 371, at page 374, says:

> "it was adopted by the people, the effect of which *was to permit the legislature* to pass any law, local, special or general, providing a scheme or charter of local municipal government for the city of Chicago."

Again, we have it pointed out that Section 34 is a permit or authority granted to the legislature, and that said Section 34 of Article IV is a grant by the people, acting through that section, to the General Assembly to establish local municipal government of the City of Chicago. This is emphasized in *People* v. *Gill,* 358 Ill. 261, where, at page 264, that Court said:

> "In passing upon the act in question, we must bear in mind that section 34 of article 4, being the constitutional amendment of 1904, *empowered the legislature* to pass laws establishing a local municipal government in and for the city of Chicago, and with the consent of the voters of the city, to pass any laws it deems requisite, limited only by the restrictions imposed by such amendment."

This same thought is further emphasized by what the Court said in *Ptacek* v. *Coleman,* 364 Ill. 618, where, in speaking of Section 34, the Court, at page 620, says:

> "It provides that the *General Assembly shall have power,* subject to the conditions and limitations therein contained, to pass any law (local, special or general) providing a scheme or charter of local municipal government for the city of Chicago";

The fact that Section 34 is a grant of power to the General Assembly is again stated in the recent case of *City* v. *County of Cook,* 370 Ill. 301, where, in speaking of Section 34, the Court at page 303, said:

> "it is provided that the *General Assembly shall have power,* subject to the conditions and limitations therein contained to pass any law (local, special or general), providing a scheme or charter of local municipal government for the territory embraced within the limits of the city of Chicago."

We thus observe that the Court defines Section 34 as a grant of power to the General Assembly concerning local municipal government of the City of Chicago.

That the powers granted by Section 34 to the General Assembly are exclusive is clearly stated in *People* v. *Wiersema State Bank,* 361 Ill. 75, where, at page 85, the Court says:

> "The rule that the expression of one thing or one mode of action in an enactment excludes any other, even though there may be no negative words prohibiting it, has been the settled law of this state since 1872. *Sammis* v. *Clark,* 13 Ill. 544; *Vestal Co.* v. *Robertson,* 277 *id.* 425."

And in *Vestal Co.* v. *Robertson,* 277 Ill. 425, the same proposition is announced in slightly different words as follows:

> "The doctrine was also annuonced and approved in the case of *Diversey* v. *Smith, supra,* that an af-

> firmative statute introductive of a new law which directs a thing to be done in a certain manner means that such thing shall not be done in any other manner, even though there be no negative words prohibiting it."

It is therefore by virtue of the power conferred on the General Assembly by Section 34 of Article IV that each and all of the acts here involved were passed. They are therefore based on said Section 34 of Article IV and being so based they do not take effect in the City of Chicago until they are approved by a majority of the legal voters in the City of Chicago.

It results that inasmuch as the four acts in question pertain to taxation for the purpose of enabling the City of Chicago to conduct its local municipal government, said acts and each of them are based upon Section 34 of Article 4.

It is also to be noted that inasmuch as Section 34 grants to the General Assembly power to pass laws granting powers to the City of Chicago concerning its local municipal government, including the all essential power of taxation, the powers expressed in Section 34 are exclusive. The consequence is that the true effect and meaning of Section 34 is that the General Assembly shall have the powers to legislate concerning the local municipal government of the City of Chicago therein expressed, and shall have no other powers so far as legislating concerning the local municipal government of the City of Chicago is concerned.

V.

The acts in question and each of them violate Section 34 of Article IV of the State Constitution in that they do not nor do any or either of them embody a requirement that the act in each instance be submitted to a referendum and receive a majority of the votes of the legal voters of the City of Chicago before it takes effect in the City of Chicago.

As we view it, the establishment of the proposition announced in the foregoing caption is of importance only in one particular. If the proposition is correct, it means that each of the acts are void. On the other hand, if it be held that the proposition is not correct, it would mean that each of the acts might still be submitted to a referendum and could become effective in the City of Chicago by a majority vote of all the legal voters in the city, but the determination of these questions is not essential to voiding the levies as it is herein contended they should be, because none of the acts have been submitted to a referendum, and under the unequivocal provisions of Sction 34, they did not take effect in the City of Chicago, and do not afford the basis for the tax levies here involved in so far as complained of. Said levies are, therefore, made without due process of law in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution and are void.

So far as our research discloses to us, there is but one case that passes on the proposition stated in the foregoing caption, that is, *People* v. *City of Chicago,* 310 Ill. 534, where, at page 540, the Court said:

> "Therefore no amendment of the Municipal Court act can take effect until it shall have been assented to by a majority of the legal voters of the city voting at a general, municipal or special election. The General Assembly acted upon this hypothesis for

many years and attached the requirement of a referendum to all proposed amendments until 1919. Amendments were submitted to the people, voted on and adopted in 1907 (Laws of 1907, p. 225,) and in 1917. (Laws of 1917, pp. 329, 333.) Other amendments were submitted, voted on and defeated in 1911, pp. 255, 260,) and in 1915; (Laws of 1915, p. 360,) and in 1913 a general revision of the act was passed by the legislature, approved by the Governor and submitted to the people but was defeated. (Laws of 1913, p. 212.) *In 1919, 1921 and 1923 amendments were passed by the General Assembly omitting the formality of a referendum* (Laws of 1919, pp. 409, 411; Laws of 1921, p. 393; Laws of 1923, pp. 307, 310.) *These acts of the General Assembly are ineffective. In passing them it assumed an authority expressly denied to it by the amendment to the constitution. The intention of the amendment is manifestly that the powers conferred by it on the General Assembly shall be exercised subject to the right of the people of the city to reject the result. The General Assembly has not the final power, but its legislation, so far as it is based on this amendment, is subject to a veto by an adverse popular vote."*

We therefore respectfully submit that inasmuch as the acts in question and each of them do not provide for a referendum and were not submitted to or approved by a referendum vote they for both reasons violate Section 34 of Article IV, and the acts themselves are void and do not constitute due process as required by Section 1 of the Fourteenth Amendment to the Federal Constitution.

VI.

This case involves the violation of Section 1 of Article XIV, of the Federal Constitution. The facts of the case are wholly undisputed. It follows that the rule stated by this Court in Traux v. Corrigan, 257 U. S. 312, at page 324 pertains. The rule there announced is, this Court "as an incident of its power to determine whether a federal right has been wrongly denied, may go behind the finding to see whether it is without substantial support. If the rule were otherwise, it almost always would be within the power of a state court practically to prevent a review here. * * * In view of these decisions, and the grounds upon which they proceed, it is clear that in a case like the present, where the issue is whether a state statute in its application to facts which are set out in detail in the pleadings and are admitted by demurerr, violates the Federal Constitution, this Court must analyze the facts as averred and draw its own inferences as to their ultimate effect, and is not bound by the conclusion of the State Supreme Court in this regard."

As appears from the Statement of Facts embodied in the petition the facts involved here are undisputed. The State Court gave no heed to the federal question presented and evaded passing squarely upon some of the state questions, and concluded its opinion with the arbitrary and capricious statement that Section 34 of Article IV did not prohibit the enactment of the statutes here involved.

The State Court opinion did not pass upon the question whether even if the four statutes involved were legally passed, they still afforded no basis for the levies in question, because such statutes were not nor were any or either of them approved by a majority of the legal voters of the City of Chicago as required by Section 34 of Article IV, and, consequently, did not take

effect in the City of Chicago, leaving each of the levies complained of without any authority therefor, and consequently without due process of law and void because in violation of Section 1 of the Fourteenth Amendment to the Federal Constitution.

Other cases in keeping with *Traux* v. *Corrigan, supra,* are:

Great Northern Railway Co. v. *Washington,* 300 U. S. 154, 166.

Johnson Oil Co. v. *Oklahoma,* 290 U. S. 158.

Beidler v. *South Carolina Tax Commission,* 282 U. S. 1, 8.

Moffitt v. *Kelly,* 218 U. S. 400, 404.

In a later case—*Lawrence, et al.* v. *State Tax Commission of Mississippi,* 286 U. S. 276, this Court, at page 282, said:

> "But the Constitution, which guarantees rights and immunities to the citizen, likewise insures to him the privilege of having those rights and immunities judicially declared and protected when such judicial action is properly invoked. Even though the claimed constitutional protection be denied on non-federal grounds, it is the province of this court to inquire whether the decision of the court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus avoided. See *Ward* v. *Love County,* 253 U. S. 17, 22; *Enterprise Irrigation District* v. *Canal,* 243 U. S. 157, 164; *Fox River Paper Co.* v. *Railroad Commission,* 274 U. S. 651, 655."

We submit that it is plain to be seen that petitioner's rights were not by the State Court's opinion judicially determined, but on the other hand the case was disposed of by an arbitrary and capricious pronouncement in conflict with the legal principles announced in the opinion itself, and in derogation of the unequivocal provisions of Section 34 of Article IV of the Illinois Constitution.

As we have noted, the State Court evaded a decision upon the federal question presented to it and now presented to this Court.

In the case last referred to, this Court treats State Court action as follows:

> "If the Constitution exacts a uniform application of this tax on appellant and his competitors, his constitutional rights are denied as well by the refusal of the state court to decide the question, as by an erroneous decision of it. See *Greene* v. *Louisville & Interurban R. Co.*, 244 U. S. 499, 508, 512, *et seq.*, *Smith* v. *Cahoon*, 283 U. S. 553, 564, for in either case the inequality complained of is left undisturbed by the state court whose jurisdiction to remove it was really invoked. * * * We therefore conclude that the purported non-federal ground put forth by the state court for its refusal to decide the constitutional question was unsubstantial and illusory, and that the appellant may invoke the jurisdiction of this court to decide the question."

In *Ward* v. *Love County*, 253 U. S. 17, this Court speaks of a situation quite similar in principle to that here involved, and at page 22, said:

> "The right to the examination was a federal right, and was specially set up and claimed as such in the petition. Whether the right was denied, or not given due recognition, by the Supreme Court is a question as to which the claimants were entitled to invoke our judgment, and this they have done in the appropriate way. It, therefore, is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forth non-federal grounds of decision that were without any fair or substantial support. *Union Pacific Railroad Co.* v. *Public Service Commission*, 248 U. S. 67; *Leathe* v. *Thomas*, 207 U. S. 93, 99; *Vandalia Railroad Co.* v. *South Bend*, *ibid*, 359, 367; *Gaar, Scott & Co.* v. *Shannon*, 223 U. S. 468; *Cres-*

will v. *Knights of Pythias,* 225 U. S. 246, 261; *Enterprise Irrigation District* v. *Farmers Mutual Canal Co.,* 243 U. S. 157, 164. And see *Jefferson Branch Bank* v. *Skelly,* 1 Black. 436, 443; *Huntington* v. *Attrill,* 146 U. S. 657, 683, 684; *Boyd* v. *Thayer,* 143 U. S. 135, 180; *Carter* v. *Texas,* 177 U. S. 442, 447. *Of course, if non-federal grounds, plainly untenable, may be thus put forth successfully, our power to review easily may be avoided. Terre Haute & Indianapolis R. R. Co.* v. *Indiana,* 194 U. S. 579, 589."

To much the same effect are:

Enterprise Irrigation District v. *Farmers Mutual Canal Co.,* 243 U. S. 157, 164.

Fox River Paper Co. v. *R. R. Commission,* 274 U. S. 651, 655.

Iowa-Des Moines v. *Bennett,* 284 U. S. 239, 246.

Louisville Gas Co. v. *Coleman,* 277 U. S. 32, 37.

As this Court will have heretofore noted, the State Court in its opinion brands the acts in question general laws. This Court, in speaking of a State Court's characterization, in *Schuylkill Trust Co.* v. *Pennsylvania,* 296 U. S. 113, at page 119, says:

> "We give great weight to the characterization of a tax, or the interpretation of a state law, emanating from the highest court of the state, but where a federal question is involved, we are not bound by the label attached to the tax or the character ascribed to the law. We must determine for ourselves the true nature of the tax by ascertaining its operation and effect. *Senior* v. *Braden,* 295 U. S. 422, 429."

Senior v. *Braden,* 295 U. S. 422, 429, is in accord with the case last cited.

The State Court in its opinion (Tr. 14) says:

> "The acts assailed by the appellant are general laws, and do not purport to be based upon section

34 of article 4 nor to affect *only* the municipal government of Chicago."

The State Court is evidently unmindful of the rule often announced by this Court to the effect that it is not what an act purports to be or the form it may take, but conversely what it is in fact, or what effect it really has.

In *Stewart Dry Goods Co.* v. *Lewis,* 294 U. S. 550, the Court, at page 555, states the rule of construction thus:

> "In resolving the issue, we are not concluded by the name or description of the tax as found in the act; our duty is to ascertain its nature and effect. *Galveston, H. & S. A. Ry. Co.* v. *Texas,* 210 U. S. 217, 227; *Choctow, O. & G. R. Co.* v. *Harrison,* 235 U. S. 292, 298; *Crew Levick Co.* v. *Pennsylvania,* 245 U. S. 292, 294; *Shaffer* v. *Carter,* 252 U. S. 37, 55; *Dawson* v. *Kentucky Distilleries Co.,* 255 U. S. 346, 348. 'The substance and not shadow determines the validity of the exercise of the power.' *Postal Telegraph Co.* v. *Adams,* 155 U. S. 688, 698. The act does not impose an income or profits tax, or a license tax, is not an inspection measure, or a police regulation."

This Court in several instances has had occasion to remark that any pretense or masquerade will be disregarded, and the true purpose of the statute ascertained, by it.

> *Smith* v. *St. Louis,* 181 U. S. 248, 57.
> *Henderson* v. *Mayor,* 92 U. S. 259.
> *Chy Lung* v. *Freeman,* 92 U. S. 275.

A salutary rule is announced by this Court in *Galveston* v. *Texas,* 210 U. S. 217, 227, as follows:

> "Neither the state courts nor the legislature, by giving the tax a particular name or by the use of some form of words, can take away our duty to consider its nature and effect."

In *Western* v. *Kansas,* 216 U. S., this Court, at page 27, says:

> "In *Henderson* v. *Mayor,* 92 U. S. 259, 268, which involved the question whether a statute of New York was in any real sense a regulation of commerce with foreign nations, the court said that in whatever language a statute may be framed, its purpose must be determined by its natural and reasonable effect. In *Mugler* v. *Kansas,* 123 U. S. 623, 661, it was said that the courts in determining whether a statute is consistent with the fundamental law must not feel themselves 'bound by mere form nor are they to be misled by mere pretenses. They are at liberty—indeed under a solemn duty—to look at the substance of things whenever they enter upon the inquiry whether the legislature has transcended the limits of its authority.' "

And, again, stated the proposition in the language:

> "The substance, not the shadow determines the validity of the exercise of power. *Looney* v. *Crane,* 245 U. S. at 189; *Postal* v. *Adams,* 155 U. S. 98."

We respectfully submit that both the legislation and the state court opinion here involved, constitute flagrant violations of Section I of the Fourteenth Amendment to the Federal Constitution, and that a case calling more appealingly for the intervention of this Court to protect the rights of an American citizen guaranteed to him by the Federal Constitution, and to maintain a constitutional form of government is rarely presented for the consideration of this Court.

VII.

Each of the acts here involved assume to make classifications for certain specific purposes as distinguished from classifying municipalities generally, thereby rendering said acts, and each of them special, in violation of Section 22 of Article IV, if they are not saved by bringing the acts within the purview of Section 34 of Article IV.

The pension acts classify for the sole purpose of the pension therein provided for in each instance.

The Tax Levy Act assumes to classify for the sole purpose of authorizing the levy of the tax therein provided for.

None of the acts make a classification of municipalities generally. Each of the acts is, therefore, special, in violation of Section 22 of Article IV.

Anderson v. *City,* 42 N. J. L. 486.
D'Arcy v. *San Jose,* 104 Cal. 642.
Ex Parte Granbonini, 117 Cal. 573.
Raner v. *Williams,* 118 Cal. 401.
Denman v. *Broderick,* 111 Cal. 96.
Mulloy v. *Board,* 246 Mich. 632.
Andrews v. *State,* 104 Ohio State 384.
Perkins v. *Philadelphia,* 145 Pa. St. 554.

If the acts are not approved by a majority of the legal voters of the City of Chicago in compliance with Section 34 of Article IV, they have no effect in the City of Chicago, and the tax levies made pursuant to them do not constitute due process of law in violation of the Fourteenth Amendment to the Federal Constitution.

Conclusion.

We believe that we have established from what has gone before,

(1) That the General Assembly has no power to place the City of Chicago in any classification.

(2) That the most that can be said of each of the four acts here involved is that they designate the City of Chicago by description as the sole city to be effected thereby.

(3) That assuming the proposition in (2) *supra* to be correct and passing the proposition that each of the acts must provide for a referendum, each of them is authorized by Section 34 of Article IV, but none of them have been approved by a majority of the legal voters of the City of Chicago and therefore none of said acts have taken effect in the City of Chicago, and none of them constitutes the basis for any of the levies here involved. Each of the acts may, however, be submitted to a referendum and, if approved, by a majority of the legal voters, then take effect in the City of Chicago.

(4) That the General Assembly has no power to enact any laws pertaining to the local municipal government of the City of Chicago, except that embodied in Section 34 of Article IV of the Constitution. That section is the sole measure of the General Assembly's authority concerning the local municipal government of the City of Chicago.

(5) That the Pension Acts are each based upon a pretended classification of 200,000 or more population. No city in the state, except Chicago, has a population of over 105,000. No city, other than Chicago, will have a population of 200,000 within the next twenty-five years

at the normal rate of increase in population. Said pretended classifications are, therefore, not real or reasonable and are not based upon a real and substantial difference having a reasonable relation to the object of the particular legislation, and are wholly arbitrary and capricious. Said pretended classifications bear no just relationship to the object sought to be accomplished by the acts in question, in that there is no relationship between population and the necessity for pensions. Pensions in municipalities of 150,000, 50,000, or 25,000 are as necessary and appropriate as in a municipality of 200,000.

(6) That the pretended classification embodied in the Tax Levy Act, that of a population of 150,000, is not based on a real and substantial difference having a reasonable relation to the object of the particular legislation which is, a grant of power to make an annual tax levy of $37,000,000, as $37,000,000 is at least twenty times as much revenue as a municipality of 150,000 would have any real occasion to expend in the honest conduct of government. Said pretended classification is therefore unreasonable, arbitrary, capricious, unnecessary and void.

(7) That each of the acts herein involved is local and is also special, and as such violates Section 22 of Article IV of the State Constitution, unless they can be said to have been passed by virtue of the power embodied in Section 34 of Article IV, in which case they are saved from the inhibition of Section 22 by said Section 34.

(8) That for the reasons hereinbefore in this Conclusion set forth and each of them the acts here involved and each of them are lacking in due process of law and violate Section 1 of the Fourteenth Amendment to the Federal Constitution and are, therefore, void.

(9) That inasmuch as the acts here involved and each

of them are void, they constitute no authority to the City of Chicago to make the tax levies in question or any or either of them, thereby rendering each and all of said levies without authority, without due process of law, and void.

(10) That for the reasons hereinbefore set forth, and because the State Court did not make any ruling on the federal question here involved and did not make any ruling on the controlling question whether each of the acts in question must be submitted to a referendum before they take effect in the City of Chicago, this Court has plenary jurisdiction to determine whether the acts in question and the tax levies in question contravene the provisions of Section 1 of the Fourteenth Amendment to the Federal Constitution.

For many years the people of Chicago placed their dependence upon Section 34 of Article IV and numerous decisions of the Supreme Court of Illinois construing that section, and were thereby led to believe that by said section they were guaranteed local home rule in all affairs pertaining to their local municipal government.

The General Assembly by the four acts here involved seek to deprive the people of Chicago of the right given by Section 34 to approve or reject all acts passed by the General Assembly pertaining to local municipal government. It was strongly urged in the Supreme Court of Illinois that these acts violate not only Section 34 of Article IV of the State Constitution, but as well that they do not constitute due process of law, and, therefore, violate the Federal Constitution.

The State Court evaded passing on either of these questions. The importance of these questions to over 3,000,000 of people is clearly of prime importance.

This Court is vested with the power and by the Con-

stitution of the United States has imposed upon it the duty to determine whether all circumstances considered, the acts in question conform to or violate the requirements of the Federal Constitution concerning due process. The petition has invoked the exercise of this power by this Court and again urgently asks this Court to order that the writ of certiorari issue, and that upon a hearing the judgments of the Supreme Court of Illinois and that of the County Court of Cook County be reversed and the cause remanded with directions to sustain the objections filed to the levies in question, on the ground that they do not nor do any or either of them constitute due process of law.

Respectfully submitted,

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